

**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a)**

Submission No. 130

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Submission by Hon Ray Groom MHA

1. I am a Member of the House of Assembly in the Tasmanian Parliament and hold the position of Shadow Attorney-General and Shadow Minister for Justice.
2. I hold a Bachelor of Laws Degree from the University of Melbourne and am a Barrister and Solicitor of the Supreme Courts of Tasmania and Victoria.
3. My role in this matter has been to respond, as an elected representative and Opposition spokesman on justice matters, to the concerns and requests of my constituents and other investors affected. The main purpose of this submission is therefore to convey to the Committee the concerns of investors particularly on behalf of those unable to attend.
4. On Friday, February 2nd this year a number of investors in Solicitor Mortgage Schemes operated by the Hobart legal firms of McCulloch and McCulloch, Lewis, Driscoll and Bull and Piggott, Wood and Baker ("the schemes") called at Parliament House, Hobart to see the Leader of the Opposition, the Hon Sue Napier and myself. They explained that they and many other investors had been waiting for a considerable period of time for the payment of interest and capital to which they were entitled. The investors said that they were extremely concerned about the state of the schemes and about the substantial losses they and many people were likely to suffer.
5. In my discussions with investors it was indicated that the schemes were contributory mortgage schemes in which a number of investors might lend money on a property secured by a mortgage. The mortgage was usually in the name of the legal firm or some partners in the firm. The investment was in no sense speculative. I am told that the interest payable was 1% to 1.5% above the long term deposit rates paid by credit unions or trustee companies. It was a term of the loan that capital could be redeemed after a period of time. I am told a common period was 30 days although

in some cases it was as few as three working days. Many people asked for their capital back two years ago or even longer.

It was pointed out that the Law Society of Tasmania was the regulator of these schemes. The schemes were granted exemption from certain national requirements by the Australian Securities Commission in 1992 following submissions by the Law Society and others indicating that the Society's regulation and supervision were sufficient to protect investors. The schemes are now in a "run out" mode which expires on the 31st October of this year. Investors are keen to know exactly what will happen to the schemes after that date.

6. In our discussions the investors pointed out to me that problems with the schemes first became apparent in about late 1998 and early 1999. At that stage there was common talk in and around Hobart that the schemes were in trouble. At that stage many investors made efforts to redeem their capital under the terms of the arrangements but without success. They felt it was an extremely serious issue not only for each of them individually but also the wider community. Their estimate was that up to \$20m of investors money was at risk involving some 300 investors.
7. One of the major concerns of this group of investors that had contacted me was that they believed the problems with the schemes were being "swept under the carpet" and kept as quiet as possible to protect reputations. They felt the problems were so serious that they needed to be publicly aired in the wider interests of the community.
8. Later during the remainder of February and in March I had a number of further approaches from investors who gave me more details about their experiences. They indicated that they and many other investors were distressed at what had happened and felt very frustrated by the lack of information and action by those with responsibility. They felt so strongly about the matter they suggested that a "Royal Commission" or some other form of inquiry was needed to get to the bottom of the problem in order to encourage better information and more effective action to protect the entitlements of the investors. Many of the investors

were quite elderly and in some cases the amount invested was their life savings. **The delays and uncertainties were impacting on the health of many of the investors.** More than one had died still unsure as to whether their money would be recovered.

9. Some of the questions investors were asking included:-

- What was the total extent of the problem. What is the total value of mortgages in default under the schemes? What is the total number of investors?
- What was the Law Society required to do as regulator of these schemes and what actual regulation and supervision took place?
- Were valuations obtained for each mortgaged property and who provided the valuations?
- Was it true that some valuations were arranged by the borrower?
- Was it true that in some cases valuations could not be located?
- Were the valuations bonafide valuations of a qualified professional valuer?
- Is it correct that some investors money was switched from one mortgaged property to another without the investor being advised?
- Is it true that in some cases mortgages were in default but further monies provided by investors were loaned to that borrower after the mortgage was already in default?
- Whilst many people are awaiting their capital other people have already been repaid. Was this done fairly and equitably as between investors?

- What realistic prospects are there of selling properties or otherwise recovering the capital owed to investors. Has there been an estimate of the likely loss and if so what is it?
10. I indicated to the people who called to see me that in the first instance I would raise the matter in the Parliament by way of questions and that I would also move for the matter to be debated as "A Matter of Public Importance" (MPI) in the House of Assembly. In the House of Assembly on Thursday, 22nd March 2001 I asked questions of the Premier of Tasmania, the Hon Jim Bacon and the issue was also briefly debated as an MPI. Attached are copies of the Hansard report of that day.
 11. Both before and since raising this issue in Parliament I have been contacted by many investors who obviously remain deeply concerned about what has happened and the fact that their funds continue to be at risk. **I have been contacted by 33 investors so far by letter, telephone call or personally.** Apart from the obvious financial pressures and worries caused for them a common theme is that they feel very upset and let down. Many previously had a great deal of trust in the legal profession with satisfactory dealings over many years but this experience has caused that trust to be badly damaged.
 12. Apart from those who are owed money as investors there have also been **problems to people who borrowed funds from the schemes.** Pressure to call in money to repay concerned investors has in some cases put great pressure on borrowers who have been required to sell up or refinance loans. This is yet another aspect of this affair which seriously impacts upon individuals and families.
 13. As mentioned the investors said to me **they believed some 300 investors were involved in the schemes with the total investment of some \$20m.** I did contact Australian Securities and Investment Commission who confirmed that there was \$55m in run out schemes and \$20m of that amount was in default. Obviously some of that money will be recovered in due course but there does not appear to be an estimate of how much this might be. The Law Society has disputed the suggestion that up to

\$20m is at risk but is itself unable to provide any estimate. In a letter written by the President of the Law Society dated 27th April, 2001 it said "*there may be losses. It is impossible to put a figure on these at this stage but on the advice and evidence presently available to the Society it can be said quite unequivocally that if there are losses, they are most unlikely to be anywhere near \$20 million.*" In my view the Law Society should at this stage at least have an estimate of the capital and interest now owing under the schemes and it should be willing to release that figure.

14. The Law Society of Tasmania has been criticised by many investors on its handling of this issue. Whilst people recognise that this has been a very difficult issue for the Society and that some efforts have been made by the Society to try and sort out the problems the people affected feel very strongly that the Law Society has not shown enough concern and empathy for their plight. Time and time again people have said to me that they felt **the Law Society did not seem to be strongly supporting them and seemed unwilling to provide information to them.** They felt that the Law Society was not acting to help and protect investors but rather was trying to protect its own image and that of the legal profession.

The investors said that they were aware of the fact that **the Law Society had responsibility as the regulator of the schemes** and felt that there was something of a conflict of interest in the Society being the regulator and largely responsible for disciplinary matters as well as for protecting and promoting the image of the profession.

15. A number of investors have questioned whether the Law Society really had the capacity and the resources to supervise these schemes and to handle the large volumes of complaints arising out of the management of the schemes.
16. One of the criticisms of the Law Society concerns the issue of **the Freedom of Information Act** and whether or not it applies to the Law Society. The Law Society says it has received legal advice that supports the argument that it is not subject to FOI but at the same time the Ombudsman has strong legal advice from the

Solicitor General indicating the Law Society was in fact subject to FOI. Unfortunately investors have said that they are left with the impression in their minds that the Law Society "must have something to hide". The Society's approach on this issue has not engendered public confidence in it. It would be helpful if the Law Society was to make public the opinion it has received on this issue. Such a step in itself would indicate a willingness on the part of the Society to share information.

17. As well as receiving letters from concerned investors I should also point out that I have had letters and telephone calls from members of the legal profession not involved in these particular schemes. It is clear that many members of the profession are concerned about the damage this whole episode is causing to the standing of the profession. It goes without saying that these problems only involve a small number of lawyers and that the vast majority of members of the profession in Tasmania are honourable and competent people. Many responsible lawyers are deeply concerned about what has happened and the way the issue has been handled on behalf of the profession.

18. Another issue of concern is the lack of information being provided. I have received many complaints that people are not being told on a regular basis what is happening to their investment. I realise that efforts have been made by the Law Society, the firm and managers involved and others but many of the investors remain dissatisfied with the flow of information. We have three different groupings of investors who invested through three different legal firms. Two of those firms McCulloch and McCulloch and Lewis, Driscoll and Bull now have managers appointed by the Court to deal with the investments. In the other case the firm of Piggott, Wood and Baker is continuing to manage their scheme. It has been put to me that a competent person should be appointed to supervise and co-ordinate the total issue to protect the interests of investors and to ensure that every effort is made to recover funds and keep investors regularly informed.

19. Consideration must be given to the changes needed to legislation and the rules of practice including powers of inspection and

audit to properly protect clients in a range of situations not just those involving investments in contributory mortgage schemes. Also consideration should be given to **the role ASIC has played to date and any deficiencies in its powers or performance** and the role ASIC can play in the future to provide more adequate protection for investors.

20. There remains a need for a comprehensive statement of the overall position. There is a feeling among investors that there has been something of a "cover up". There is no doubt that for many of them it has been difficult to get information. Some weeks ago I did ask the Tasmanian Attorney-General whether he could obtain **a comprehensive statement setting out all relevant details about the schemes**. He indicated he would endeavour to obtain this but so far it has not been provided to me. This Committee will greatly assist the investors and the wider community if it can provide a comprehensive statement in its report on the events surrounding these schemes, the cause or causes of the problem, the current position and the efforts which have been made and further efforts that can be made to recover the entitlements of the investors involved.


Ray Groom